85-1734

No.

SUPREME COURT, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

JOHN R. and THOMAS B. CONNOR,

Petitioners,

v.

LUCAS PHILLIPS, JR., Administrator, C.T.A., Estate of Mary A. Connor and FRED BLACKWELL, Esquire,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

John R. Connor, Pro se
Thomas B. Connor, Pro se
380 Wyoming Avenue
Millburn, New Jersey
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QUESTIONS PRESENTED

1. Whether the Superior Court of New Jersey (Chancery Division) violated Petitioners' Due Process rights, under the Fourteenth Amendment, when it conducted administration, or probate, hearings within the jurisdictional predicate of decedent Mary A. Connor's equity litigation of Connor v. Flynn, Flynn v. Connor, Docket Nos. C-2565-68/C-3138-68, under circumstances where decedent's Estate was not represented as a party?

2. Whether the substitution of the Administrator, C.T.A., for decedent Mary A. Connor, without notice to Petitioners, as required by R. 4:34-1(b), violated Petitioners Due Process rights under the Fourteenth Amendment?

PARTIES TO THE PROCEEDING ARE:

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380 Wyoming Avenue
Millburn, New Jersey 07041

Lucas Phillips, Jr., Esq.,
Administrator, C.T.A.
Estate of Mary A. Connor
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

In the matter of

JOHN R. and THOMAS B. CONNOR,

Petitioners,

v.

LUCAS PHILLIPS, JR., Administrator, C.T.A., Estate of Mary A. Connor and FRED BLACKWELL, Esquire,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

Petitioners John R and Thomas B. Connor hereby petition the U. S. Supreme Court for a writ of certiorari to review the Final Order of the New Jersey Supreme Court in this case.

JURISDICTION

On November 6, 1985, the New Jersey Supreme Court entered an order (filed November 7, 1985) dismissing the within appeal of Petitioners "for failure to present a substantial constitutional question within the meaning of Rule 2:2-1(a) and applicable case law." The Court simultaneously dismissed a motion of Respondent Fred Blackwell to dismiss the appeal as "moot." (App. A, infra, pp. 1-2a). By its Order, dated January 13, 1986 (filed January 15, 1986), the Supreme Court of New Jersey denied a motion for rehearing (Petitioner John Connor - Movant). (App. D, infra, p. 28a).

The jurisdiction of the U. S. Supreme Court is invoked under 28 U.S.C. §1257(c). The opinions herein are not reported.

CONSTITUTIONAL PROVISIONS AND COURT RULES INVOLVED

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> No state * * * shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

N. J. Sup. Ct. C.P.R. 2:2-1(a) provides:

> Appeals may be taken to the Supreme Court from final judgments as of right: (1) in cases determined by the Appellate Division involving a substantial question arising under the Constitution of the United States or this State. . .

N. J. Sup. Ct. C.P.R. 4:34-1(b) provides:

> If a party dies and the claim is not thereby extinguished, the court shall on motion order substitution of the proper parties. The motion for substitution may be made by the successors or representatives of the deceased party or by any party, and notice thereof shall be served on parties as provided by R. 1:5-2 and on persons not parties in the manner provided by either R. 4:4 (service of original process) or, of the court directs, R. 4:67-3 (service of orders to show cause).

N. J. Sup. Ct. C.P.R. 4:99-3 provides:

> In all actions * * * brought * * * on notice with relation to the estate * * * every paper shall be entitled "In the Matter of the Estate of ____ _____, Deceased. . .

STATEMENT OF THE CASE

This is the fourth petition which has now been brought to the U. S. Supreme Court by Petitioner John R. Connor, in heretofore unsuccessful attempts to reverse certain decisions emanating from the Superior Court of New Jersey (Chancery Division: Essex County) involving either the within equity litigation or the Estate of Mary A. Connor, itself.[1]

Mary A. Connor is the deceased plaintiff in Connor v. Flynn, Docket N° C-2565-68, and defendant in Flynn v. Connor, Docket N° C-3138-68, consolidated suits in equity which involve a claim for an "accounting" of (missing) partnership profits (C-2565-68) and a "partition" of the real and personal property associated with the business of Flynn's Tavern in Millburn, New Jersey (C-3138-68).

[1] Connor v. Warren, cert den. 449 U.S. 1079 (1981). Connor v. Flynn, cert den. 449 U.S. 1079, reh. den. 450 U.S. 971 (1981). Connor v. Phillips, cert den. 455 U.S. 991, reh. den. 456 U.S. 939 (1982).

At the time of her death in 1977, Mary A. Connor had prevailed in these suits, both individually and as Executrix of the Estate of Mary Ellen Flynn (her mother), to the extent of $35,546.00, which monies were deposited in a Superior Court Trust Fund by court order in 1972. Of that sum, $6,408.90 represented monies won by decedent in C-2565-68 and the balance, or $29,137.10, represented decedent's one-third (1/3) share of the proceeds from a sheriff's sale of the aforesaid business assets. These monies remained in the Trust Fund until June 28, 1984, when they were disbursed to several attorneys in accordance with the terms of the Chancery Division's February 29, 1984 Order of Disbursement, which is one of two orders involved in this petition. (App. C, infra, pp. 22-27a). At the time of disbursement, the fund, including interest, totalled $58,428.02.

By the terms of her Last Will and Testament, probated in the Chancery Division on December

4, 1979 (Estate of Mary A. Connor, Docket No. P-292-77), decedent Mary Connor appointed John Connor (her son) to serve as executor and also bequeathed to him her "right, title and interest, including the proceeds, of the judgment in * * * Connor v. Flynn..." (App. B, infra, p. 8a).[2] To Thomas Connor (her husband) she bequeathed, inter alia, the Flynn v. Connor (partition) monies in the Trust Fund.[3]

Following objections from several of the attorneys involved in this matter, the Chancery Division refused to allow John Connor to serve as executor and the court, instead, has appointed a succession of two administrators: George Warren (resigned in 1979) and Lucas E. Phillips, Jr., Esq., the present Administrator, C.T.A.

Petitioner John Connor has heretofore attempted to remove the present administrator, whose appointment has only been saved by virtue of a false finding of res judicata by the

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2 The $6,408.90.
3 The $29,137.10.

Appellate Division of the Superior Court on the issue of the illegality of Petitioner's disqualification. The Supreme Court declined to grant certiorari in the matter.[4]

To properly understand the background of the "attorneys' liens" at issue herein, one has to go back to May, 1977 when decedent Mary Connor, pro se, succeeded in reversing a prior (1975) Chancery Division judgment which awarded substantial attorneys' fees herein, same to be paid out of the Trust Fund. In reversing that judgment, the Appellate Division specifically held that "[p]laintiff was entitled to a plenary hearing on the matter of counsel fees. H. & H. Ranch Homes, Inc. v. Smith, 54 N.J. Super. 347 (App. Div. 1959). She was entitled to appear and be heard with regard to the fair value of the attorneys' services. Tuessel v. Cadillac Bar Corp., 63 N.J. Super. 430 (App. Div. 1960), certif.

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[4] Connor v. Phillips, cert. den. 455 U.S. 991, reh. den. 456 U.S. 939 (1982).

den. 34 N.J. 65 (1961)."(App. F, infra, pp. 33-34a). (Emphasis added). The "lien" issue was then "remanded to the Chancery Division for a plenary hearing consistent with the views expressed in this opinion." Id., at 36a.

Since the death of Mary A. Connor in 1977,[5] no substitution of parties occurred, until the present February 29, 1984 Order of Disbursement which names the Administrator, C.T.A. as "a party defendant in substitution of deceased Mary A. Connor." (App. C, infra, p. 23a). Throughout this period, the Chancery Division has taken the position that Petitioner John Connor has the standing of a mere "beneficiary" in this matter - and not a "successor-party" - despite Petitioner's receipt of "title" to the Connor v. Flynn litigation. Additionally, no one has represented the Estate of Mary Ellen Flynn as a party

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[5] Mary A. Connor passed away almost 9 years ago on November 24, 1977. Petitioner John Connor filed a Wrongful Death suit, following the refusal of Administrator George Warren to file same. Mr. Warren receives $6,094.26 in the Order of Disbursement. The Wrongful Death suit, Connor v. Sachs, A-3491-83T3, is still pending in the Appellate Division.

since Mary Connor's death, due to the fact that a docketed judgment entered in that estate (Estate of Mary Ellen Flynn, Docket No. 9211-0), which appointed an unidentified Substitute Administrator C.T.A., has "disappeared" from the court files and the Essex County Prosecutor George Schneider has not found it in the past two years. Finally, party Edward J. Flynn passed away in 1982.

A second attempt to decided the matter of the "attorneys' liens" commenced with the Chancery Division's Order of August 7, 1981. This order, which is the second order involved in this petition, was entered on the application of the Administrator, C.T.A. (App. G, infra, pp. 37-39a). This order not only directed that the Trust Fund "be paid to Lucas E. Phillips, Jr., Esq., Administrator, C.T.A." but also established a procedure for payment of attorneys' lien claims whereby "certifications and exhibits relating to

their claims against said funds" were to be submitted to the Administrator, C.T.A., for his "review" subsequent to which Mr. Phillips was directed to "bring an application before the Court, for an Order establishing the amount of such claims and authorizing the payout of same." Id., at 38-39a.

In compliance with this order, the Administrator, C.T.A. (Phillips) prepared a Report or Certification (App. H, infra, pp. 40-43a) wherein, after reciting his authority as Administrator, C.T.A., he stated his intention to "collect said [trust] funds on deposit with the Clerk of the Superior Court in order to satisfy the obligations of the Estate of Mary A. Connor." Id., at 40a. (Emphasis added). Phillips then stated his "intention to pay the following debts immediately upon the release of said funds," which totalled $37,690.33 in payments for both obligations of the Estate of Mary A. Connor and attorneys' lien claims in the equity litigation herein. Id.,

at 40-42a.

After a hearing on the Administrator's Report conducted in the Chancery Division on December 21, 1981, the court "allowed" the stated counsel fees, with interest, for a total of $50,823.51. (See: Appendices I,J,K, L and M, infra, pp. 44-56a). However, the order based on the December 21, 1981 hearing was never signed by the court. (App. J, infra, p. 48a).

During Petitioner John Connor's appeal of the August 7, 1981 order, it had become apparent that the December 21, 1981 hearing conducted on the Administrator's Report would not satisfy the Appellate Division's 1977 mandate ordering a "plenary hearing" on the issue of the attorneys liens. That problem was brought to the attention of the Chancery Division by Claimant Fred Blackwell, Esq., who, on May 18, 1983, wrote the court requesting "...that a hearing be held on the claims for counsel fees in the above matter. I believe

that such a hearing is necessary in order to comply with the requirement of the May 11, 1977 decision of the Appellate Division for a plenary hearing..." (App. L, infra, p. 52a). This suggestion later became formalized in a letter, dated October 13, 1983, from Claimant Hannoch, Weisman which noticed that a second hearing had been scheduled by the Chancery Division for November 16, 1983. (App. M, infra, p. 52a). The stated purpose of this second hearing was: first, to "enable the Court to review the certification, dated December 21, 1981, submitted by Lucas Phillips, Esq., Administrator, C.T.A. (a copy of which is attached hereto), establishing the amount of claims against the subject fund" (the Chancery Division had already done this at the first hearing on December 21, 1981); second, to "authorize payment of same" (it had already "allowed" the payments on December 21, 1981); and third, to give each claimant the opportunity to "calculate the accumu-

lated interest on his claim" (they had already accomplished this task as well). Id., at 55-56a).

On November 16, 1983, Petitioner John Connor appeared in court and requested that the hearing be adjourned, principally on the ground that Petitioner had a motion returnable December 9, 1983 for a construction of the will of Mary A. Connor to decide the disputed issue of whether decedent's bequest of "right, title and interest" in Connor v. Flynn made Petitioner a party (or a joint party with the Administrator, C.T.A.) to that litigation, the case in which the attorneys-claimant had rendered services. (See: Transcript I, November 16, 1983, pp. 8-12) The court denied the request (id., p. 12, ll. 18-19), and informed Petitioner that he could only appear at the hearing "as a beneficiary" (Transcript I, p. 9, ll. 13-14) or "legatee" (Transcript I, p. 10, l. 11) -

not as a party. Petitioner then departed the courtroom and did not further participate in the November 16, 1983 hearing. Not one of the captioned "parties" in this litigation was present in court that day.

During the November 16, 1983 hearing, neither the Administrator, C.T.A., nor his attorney (John Watson, Jr., Esq.), at any time, asked a single question of any of the lawyers appearing on their claims. No cross-examination was conducted (see: Transcript II, November 16, 1983, p. 13, ll. 13-15; p. 18, ll. 5-6; p. 9, ll. 3-7; and p. 21, ll. 16-17). No defenses were offered, despite the availability of the Shilowitz defense (under New Jersey law, an attorney is not entitled to compensation for his services from a "fund in court" unless he "aided directly in creating, preserving or protecting the fund." Shilowitz v. Shilowitz, 115 N.J. Super. 188 (Ch. 1971). And Mary Connor had established the Trust Fund as a result of her own efforts, pro se).

Further, the Administrator C.T.A. did not introduce in evidence the 1972 judgment in Connor v. Flynn, which, at several points, specifically blamed Hannoch, Weisman's "discovery" failures for the loss of Mary Connor's profit-skimming claims (in excess of $100,000). No claim of breach of contract was advanced on the grounds that the firms of Hannoch, Weisman, and Milton, Keane & DeBona and individual attorney Fred Blackwell, Esq., unlawfully withdrew from representing decedent prior to the conclusion of the case. Not one word was spoken of Hannoch, Weisman's written "contingency" contract with Mary A. Connor (App. N, infra, pp. 57-60a), nor of Claimant Blackwell's oral contract to litigate Connor v. Flynn for the specific figure of $7,500. Not a single objection was entered at any time by the Administrator, C.T.A., or his attorney - even for the record. Finally, at the conclusion of the hearing, the Court accepted a suggestion that

the Administrator, C.T.A., be substituted in the litigation as a "party." (Transcript II, November 16, 1983, p. 26, 11. 10-13).

The Chancery Division's Order of Disbursement (App. C, infra, pp. 22-27a) also "allowed" disbursements of $49,998.04 in counsel fees and interest from the Trust Fund. The attorneys' fees includes administration expenses for Hannoch, Weisman ($3,385.10, plus interest), Administrator George Warren, Esq. ($6,094.26) and Administrator, C.T.A. Lucas Phillips, Jr., Esq. ($5,500.00), however the latter award was struck by the Court when the Administrator, C.T.A., failed to respond to Judge Thompson's telephone inquiries as to why the Administrator never paid any New Jersey estate and inheritance taxes on any of the assets of the Estate of Mary Connor, including the Trust Fund.

More recently, on August 2, 1985, the Chancery Division signed an Order (filed: August 5, 1985) awarding Claimant Blackwell

the sum of $1,016.96 as additional interest. This latest order still does not include the Administrator, C.T.A., as a "party-defendant" in lieu of decedent Mary A. Connor. The caption contains all the original parties to the consolidated litigation. (App. O, infra, pp. 61-63a).

On successive appeals to the Appellate Division and the New Jersey Supreme Court from the February 29, 1985 Order of Disbursement (App. C) and the August 7, 1981 Order (App. G), Petitioners have advanced the following principal arguments to secure reversal: that they are null and void, and in violation of Petitioners' 14th Amendment Due Process rights, because: 1) the Chancery Division lacks jurisdiction to conduct probate (administration) proceedings within the context of decedent Mary A. Connor's accounting and partition litigation herein; 2) that the Estate of Mary A. Connor has never been represented in these proceedings as a party; and

3) that the substitution of the Administrator, C.T.A., as a party-defendant for decedent Mary A. Connor, without notice to either John Connor or Thomas B. Connor, as required by R. 4:34-1(b), substantially violated their due process rights under the 14th Amendment.

Petitioners' argument on the "jurisdictional" issue (i.e., that the Chancery Division had unlawfully conducted a "probate" proceeding within the equity litigation herein) was first made in Petitioners' Appellate Division merits brief as a legal argument. On their second appeal, to the New Jersey Supreme Court, this argument was presented as a federal question. With regard to the "notice" argument(i.e., that Petitioners were entitled to notice of the Administrator C.T.A.'s substitution in this litigation, under R. 4:34-1b), Petitioners presented same as a federal question in their merits briefs, in both the Appellate Division and the New Jersey Supreme Court.

The Appellate Division, in a per curiam

opinion, held that "[p]robate proceedings are not even remotely involved in the two proceedings below. The monies on deposit with the Clerk of the Superior Court arose from the partition proceedings and the accounting proceedings from the profit and receipts of the tavern. The only relation is the fact that the administrator c.t.a. is a proper party to the proceedings as a representative of the Estate of Mary A. Connor." (App. B, infra, pp. 16-17a). The Appellate Division further decided that the Administrator, C.T.A., had "participated in the December 1981 as a de facto party and the substitution that took place in 1984 was merely a formality." Id., at 18a. With respect to Petitioners' claim to "notice" of the Administrator's substitution, the Appellate Division found that: "Connor was entitled to no notice under the rule." Id., at 20-21a.[6]

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[6] The reference is strictly to John Connor. See: Appendix B, infra, p. 4a and pp. 20-21a.

Petitioners filed an "as of right" appeal (R. 2:2-1a), arguing the "jurisdictional" and "notice" issues. The New Jersey Supreme Court dismissed the appeal for "failure to present a substantial constitutional question." (App. A, infra, p. 2a). A petitioner for rehearing was denied on January 15, 1986. (App. D, infra, p. 28a). The federal questions presented to the New Jersey Supreme Court are basically identical to those presented in this petition.

* * * * *

REASONS FOR GRANTING THE WRIT

1. Rule 17 of the Rules of the Supreme Court state that review on a writ of certiorari will only be granted when there are "special and important reasons therefor," such as "[w]hen a state court * * * has decided a federal question in a way in conflict with applicable decisions of this Court." Rule 17.1(c).

The Supreme Court has long upheld the rule of law that "[n]o judgment of a court is due process of law, if rendered without jurisdiction in the court, or without notice to the party." Scott v. McNeal, 154 U.S. 34, 46 (1893). In Scott, supra, the Supreme Court reversed and remanded a judgment to the Supreme Court of the State of Washington, on its Fourteenth Amendment finding that the probate court had no jurisdiction to issue letters of administration upon the estate of a living person, presumed deceased, who was held entitled to his land against an innocent purchaser.

In Scott, supra, the Court defined "due process of law" to encompass:

> '...a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution * * * to pass upon the subject matter of the suit...'

Id., at 46. As the probate order in Scott

was rendered without jurisdiction in the court, so were the two "probate" orders in the litigation herein. (App. C and App. G).

Petitioners' joint appeal to the New Jersey Supreme Court was dismissed for "failure to present a substantial constitutional question within the meaning of Rule 2:2-1(a) and applicable case law." (App. A, infra, p. 2a). However, a review of the applicable case law of New Jersey establishes that Petitioners were entitled to a second, as of right appeal on the jurisdictional question herein. In 1968, the New Jersey Supreme Court specifically held that it "...may, but need not, accept a constitutional issue not raised below * * * exceptions to this rule are made when the questions raised on appeal go to the jurisdiction of the court below..." Meeker v. Meeker, et al, 52 N.J. 59,65 (1968)(emphasis added). In particular, the party must be heard "where the question goes to the jurisdiction of the subject matter." State v. Shupe,

88 N.J.L. 610,612 (Ct. Err. & App. 1916). The controlling precedent on this point is the earlier case of Dodd v. Una, 40 N.J. Eq. 672 (Ct. Err. & App. 1885), in which a Chancery Court contempt order was held void because the court lacked subject matter jurisdiction. Id., at 713. The Court of Errors and Appeals held: [a]ppellant has presented the question of jurisdiction to this court * * * we are bound to consider the question so presented..." Id., at 713.

Consequently, under the aforecited criteria, Petitioners' jurisdictional question meets the New Jersey Supreme Court's standard for a second appeal under R. 2:2-1(a).

* * *

Petitioners' "jurisdictional" question concerns the fundamental competency of the Chancery Division of the Superior Court of New Jersey to conduct administration (probate) proceedings within the jurisdictional predicate of decedent Mary A. Connor's inter-partes

equity suits, herein, and without the representation of decedent's Estate. The situation in the Chancery Division in this matter presents the classic case of a court, as described by Mr. Justice Frankfurter, "so obviously traveling outside its orbit as to be merely usurping judicial forms and facilities." United States v. United Mineworkers of America, 330 U.S. 258,309 (1947) (concurring opinion).

The May 11, 1977 decision of the Appellate Division (App. F, infra, pp. 33-34a) specifically ordered that the issue of the attorneys' fees be re-tried as a plenary hearing in accordance with the adversarial procedures outlined in H. & H. Ranch Homes, Inc. v. Smith, 54 N.J. Super. 347 (App. Div. 1959) (service of petition, answer, pretrial discovery proceedings, pretrial conference, plenary suit, etc.). This decision became a binding mandate on the Chancery Division. Application of Plainfield-Union Water Co., 14 N.J. 296 (1954).

However, instead of implementing this decision, the Chancery Division, on August 7, 1981, entered an order which set up an "administrative" procedure whereby the Administrator, C.T.A., was allowed to "review" and establish the attorneys' fees himself, based on attorneys' "certifications and exhibits." (App. G, infra, pp. 37-39a). The end result was the Administrator's Certification, dated December 21, 1981, wherein the Administrator, C.T.A., "[a]s Administrator," applied to the court to take possession of the Trust Fund "...in order to satisfy the obligations of the Estate of Mary A. Connor" and to pay "the following debts..." (App. H, infra, pp. 40-43a). The Administrator, C.T.A., therefore, decided what claims to pay and in what amount; none were adjudicated.

This report is the basis for the Chancery Division's February 29, 1984 Order of Disbursement, which "allowed" the claims with interest. (App. C, infra, p. 23a). On the second page of

the Order, it is unequivocally stated:

> ...and the Court having considered the report of the Administrator, C.T.A., dated December 21, 1981, and after conducting a plenary hearing on all of the said matters...

(App. C, infra, p. 23a) (emphasis added).

In addition to counsel fees incurred in the Connor v. Flynn litigation herein, this order also includes administration expenses of the Estate of Mary A. Connor, Docket No. P-392-77, specifically: the allowance of $6,094.26 in fees for (first) Administrator George Warren (App. C, p. 25a); $3,385.10, plus interest, to Claimant Hannoch, Weisman for services in connection with the "Estate of Mary A. Connor, Docket No. P-392-77" (App. H, p. 41a); and a last-minute deletion of $5,500.00 to the Administrator, C.T.A., "for his services in this matter as Administrator." (App. C, p. 26a).

At no time during these proceedings in the Chancery Division was anyone under the impres-

sion that the court was proceeding on the basis of a plenary suit, following the adversarial procedures required by H. & H. Ranch Homes, Inc. to "litigate" the issue of the attorneys' fee claims. In fact, during the second (November 16, 1983) hearing, Claimant Blackwell stated on the record: "Your Honor, I would like to state that we are appearing in furtherance of the Certification. It was submitted December 22." (Transcript II, November 16, 1983, p. 4, ll. 23-25).

The end result of the Chancery Division proceedings is that decedent Mary A. Connor's equity litigation has been used simply as a piece of "scenery" for the conduct of administration proceedings on the several applications of the Administrator, C.T.A. Connor v. Flynn and Flynn v. Connor, being "accounting" and "partition" suits in equity, can provide no jurisdictional basis for administration proceedings, that can only lawfully occur within the Chancery Division's probate jurisdiction,

specifically the Estate of Mary A. Connor, Docket No. P-392-77. R. 4:99-3.

Even under New Jersey law, the two Chancery Division orders herein must be found void because, in order for a New Jersey court to have the right to adjudicate concerning the "subject matter" in a given case, the court "...must have cognizance of the class of cases to which the one to be adjudged belongs * * * [and] the proper parties must be present." Leachman v. Kite, 133 N.J.L. 240, 241 (1945), quoting from the New Jersey Supreme Court's holding in Sbrolla v. Hess, 133 N.J.L. 71 (1945). See: Munday v. Vail, 34 N.J.L. 418,432 (N.J. Sup. Ct. 1871). (Emphasis added). Put simply, administration proceedings, such as were conducted here, do not belong in the classes of "accounting" and "partition" suits, such as the within in personam litigation.

* * *

Leachman v. Kite, supra, also requires that, in order for a court to have jurisdiction,

"...the proper parties must be present." Leachman, supra, p. 241. On this issue, the Supreme Court has unequivocally held that "[a] court of equity cannot make a final decree until all the parties essential to the merits of the questions are brought in." Shields v. Barrow, 17 How. 130, 15 L.Ed. 158 (1855). See: Swan Land & Cattle Co. v. Frank, 148 U.S. 603 (1893); California v. Arizona, 440 U.S. 59, 62 (1979).

The record herein establishes that the Administrator, C.T.A., was only substituted as a party in this litigation as a result of the February 29, 1984 Order of Disbursement which is the subject of this appeal. In its May 30, 1985 opinion, the Appellate Division found that the Administrator, C.T.A., had "participated in the December 1981 hearing as a de facto party and the substitution that took place in 1984 was merely a formality." (App. B, infra, p. 18a).

The law of New Jersey makes no provision for "de facto" parties, and, in fact, is quite specific that:

> No one but a party to a suit can make any motion in it except for the purpose of being made a party; and a petition filed by a stranger to a suit will be dismissed * * * The conduct of suits belongs to the parties to them, and only they have the right to apply for order or directions.

Collins v. Kiederling, 87 N.J. Eq. 12,14 (Ch. 1916). (Emphasis added). Accordingly, and at all times, and certainly during the two hearings (December 21, 1981 and November 16, 1983) held on the attorneys' fee claims, the Administrator, C.T.A., has been a "stranger" to this litigation as a matter of law.

In its opinion, the Appellate Division found that "Lucas Phillips, as administrator, c.t.a. of the Estate of Mary A. Connor was the only proper party to the proceedings." (App. B, infra, p. 18a). However, that substitution has never occurred and, on August 2,

1985, subsequent to the 1984 Disbursement Order, the Chancery Division (same judge) signed an order granting additional interest monies to Claimant Blackwell - without including the Administrator, C.T.A., as a substituted party in this consolidated litigation. (App. O, infra, pp. 61-63a). The Order was filed August 5, 1985.

What has transpired, herein, is the enactment of the charade of substitution whereby the Estate of Mary A. Connor, unrepresented in these proceedings, is being defrauded of its principal asset - the Superior Court Trust Fund, valued in excess of $58,000. The November 16, 1983 hearing on the Administrator's Report took place before the Administrator's substitution has become a fact. On that date, Mr. Phillips was neither a party to this litigation, nor had he taken possession of the Trust Fund, as he had been directed to do by the Court's August 7, 1981 Order. (App. G, infra, p. 38a). He appeared and remained

lent and did not defend against the grossly-
aggerated counsel fee claims (see: Statement
Facts, infra, pp. 14-16).

In accordance with the Supreme Court's rul-
g in Shields v. Barrow, supra, the August 7,
81 and February 29, 1984 Orders in this liti-
tion cannot be allowed to stand because the
ancery Division lacked the requisite juris-
ction and the Estate of Mary A. Connor was
t represented in the proceedings as a party.

* * *

Petitioners' second ("notice") federal
estion concerns the fact that the Adminis-
ator, C.T.A., was substituted as a party in
is litigation, without notice to either
titioner, herein, in direct violation of
4:34-1(b) which requires that a "...motion
r substitution * * * be made by the suc-
ssors or representatives of the deceased
rty or by any party, and notice thereof
all be served on parties * * * and on
rsons not parties..."

On this issue, the Supreme Court has held that: "[n]otice and hearing, together with a legally competent tribunal having jurisdiction of the case, constitute basic elements of the constitutional requirement of due process of law." Powell v. Alabama, 287 U.S. 45 (1932). A state violates due process when it fails to follow procedural steps it has adopted for proceedings held before it, Whiteside v. Kay, 446 F.Supp. 716 (D.C. La. 1978), and "[r]ules of court, including rules requiring joinder of all necessary parties * * * are an essential consideration with respect to whether an affected party has had notice and an opportunity to be heard." Kessler v. Tarrats, 191 N.J. 273, aff'd. 194 N.J. Super. 136 (Ch. Div. 1983). Moreover, it is well-established by the Supreme Court that the federal guarantee of due process extends to a State's judiciary, Brinkerhoff-Faris Co. v. Hill, 281 U.S. 673 (1930), and that the protection of the Fourteenth Amendment can be

invoked "only if a state deprives any person or denies enforcement of a right guaranteed." Rice v. Sioux Memorial Park Cemetery, Inc., et al, 349 U.S. 70 (1955).

In its opinion, the Appellate Division deviously concluded that "Connor was entitled to no notice [of the substitution] under the rule" (the first sentence of its opinion makes clear that "Connor" refers exclusively to John Connor: "Appellants John R. Connor (Connor) and Thomas B. Connor appeal from an order entered February 29, 1984..."; see: App. B, infra, p. 4a). The Appellate Division (and the New Jersey Supreme Court) therefore made no ruling on the argument of Thomas B. Connor that he, an original party to this litigation since its inception, was entitled to notice of the substitution motion, in accordance with R. 4:34-1(b).

As heretofore related, Petitioner John R. Connor was bequeathed the "title" to Connor v. Flynn by his deceased mother, Mary A. Connor.

(See: Statement of Facts, infra, p. 6). Under New Jersey law, a lien which an attorney may have for services rendered in a particular cause of action only "attaches to the judgment in the cause for which the services were rendered." Brauer v. Hotel Associates, Inc., 40 N.J. 420 (1963). In other words, John Connor succeeds to his mother's right to have the attorneys' fees re-litigated in a plenary hearing as a party in Connor v. Flynn, the suit in which the legal services were rendered - and he does not merely have the standing of a "beneficiary" or "legatee."

Consequently, because neither "party" Thomas B. Connor nor "successor party" John R. Connor received notice of the Administrator, C.T.A.'s substitution, in accordance with R. 4:34-1(b), their Due Process rights under the Fourteenth Amendment have been substantially and seriously violated.

*

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted and/or the matter remanded to the Supreme Court of New Jersey for full consideration of Petitioners' arguments, on the merits.

Respectfully submitted,

John R. Connor, Pro se

Thomas B. Connor, Pro se

Dated: 14 April, 1986

APPENDIX "A"
(Filed: November 7, 1985)

SUPREME COURT OF NEW JERSEY
A-109 September Term 1985

In the Matters of:

MARY A. CONNOR, Individually
and as Executrix of the Estate
of Mary Ellen Flynn,

Plaintiff,

v.

EDWARD J. FLYNN,

Defendant.

ORDER

EDWARD FLYNN and BERNICE FLYNN,

Plaintiffs,

v.

MARY CONNOR and THOMAS CONNOR,

Defendants.

This matter having come before the Court on a notice of appeal as of right filed by John R. Connor, pro se, and the Court having reviewed the submissions of the parties, and having for the purpose of that review included Thomas B. Connor, pro se, as an additional appellant,

and good cause appearing;

It is ORDERED that the within appeal be and hereby is dismissed for failure to present a substantial constitutional question within the meaning of Rule 2:2-1(a) and applicable case law; and it is further

ORDERED that the motion of respondent, Fred Blackwell, pro se, to dismiss the within appeal (M-275) is dismissed as moot.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, on this 6th day of November, 1985.

/s/ Stephen W. Townsend
CLERK OF THE SUPREME COURT

APPENDIX "B"
(Filed: May 30, 1985)

NOT FOR PUBLICATION
WITHOUT THE APPROVAL OF THE
COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3187-83T3

IN THE MATTER OF MARY A. CONNOR,
Individually, and as Executrix of
the Estate of Mary Ellen Flynn,

Plaintiff,

v.

EDWARD J. FLYNN,

Defendant.

EDWARD FLYNN and BERNICE FLYNN,

Plaintiffs,

v.

MARY CONNOR and THOMAS CONNOR,

Defendants.

Argued: March 25, 1985 -- Decided: May 30, 1985

Before Judges King and Deighan.

On appeal from the Superior Court,
Chancery Division, Essex County.

John R. Connor argued the cause pro se.
(Mr. Connor and Thomas B. Connor, pro se
on the brief).

Fred Blackwell argued the cause pro se.

Mark J. Keane appeared on behalf of Keane and Brady but did not argue the case.

PER CURIAM

Appellants John R. Connor (Connor) and Thomas B. Connor appeal from an order entered February 29, 1984 allowing counsel fees and directing payment by the Clerk of the Superior Court from funds on deposit. Appellants also appeal from an interlocutory order entered August 7, 1981 requiring that the funds on deposit with the Clerk of the Superior Court be transferred to attorney Lucas E. Phillips, Jr., Administrator c.t.a. of the Estate of Mary A. Connor, directing that the funds remain subject to any liens and further directing that the Administrator c.t.a. make application for an order to establish claims and to authorize payment of them.[1] Incredibly, this matter was commenced in

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1. Appellants refer to a court order of September 21, 1981 which was the subject of a prior interlocutory appeal. The order referred to in their appendix is dated August 21, 1981.

1969 at which time Mary A. Connor, individually and as executrix of the estate of Mary Ellen Flynn, as plaintiff, instituted suit against her brother, Edward J. Flynn, as defendant, in the Superior Court of New Jersey, Chancery Division, Essex County, Docket No. C-2565-68 for an accounting of the profits and receipts of a tavern known as Flynn's Tavern. Plaintiffs in that action had a one-third interest. Edward Flynn and Bernice Flynn then instituted a suit for partition of the tavern property and its assets in an action entitled Edward Flynn and Beatrice Flynn, Plaintiffs, v. Mary A. Connor and Thomas Connor, Superior Court of New Jersey, Chancery Division, Essex County, Docket No. C-3138-68. Subsequently the actions were consolidated.

The partition action was tried before Judge A. Alfred Fink in 1972 who ordered the tavern sold by the sheriff of Essex County. Edward Flynn bought the tavern and its assets at the sheriff's sale in May 1972 for $87,412.20. The court ordered that the proceeds of the sale be deposited

with the Clerk of the Superior Court to await the outcome of the accounting action instituted by Mary A. Connor.

The accounting action was tried before Judge John Ackerman. The record in that action indicates that Mary A. Connor was represented by the law firm of Milton, Keane & DeBona with Fred Blackwell, an out-of-state attorney, appearing. A judgment was entered on March 7, 1975 which recites the sum of $87,412.20 as deposited with the Clerk of the Superior Court in accordance with the prior order of the court in the partition action and further recites that plaintiff in the accounting action is entitled to one-third of that amount and that defendant, Edward J. Flynn, et als, is entitled to two-thirds of that amount. The judgment further recites that attorneys' liens have been asserted and reserved against any recovery of the plaintiff by Hannoch, Weisman, Stern & Besser, Milton, Keane & DeBona, and Fred Blackwell, Esq. The judgment determined that Mary A. Connor was entitled to the sum of $6,408.80 on the accounting and directed that

wo-thirds of the monies on deposit be paid to dward J. Flynn and Bernice, his wife, and the ther one-third plus any accrued interest and he monies found due in the accounting action emain on deposit with the Clerk of the Superior ourt to await the final determination of the ttorneys' liens.

On April 15, 1975 Mary A. Connor filed an ppeal to this court from Judge Ackerman's order f March 7, 1975.[2] This was the first of three ther appeals to follow over the subsequent years. ohn R. Connor, who apparently is not an attorney, on of Mary A. Connor, represented his mother be- ore this court on that appeal without objection. n August 11, 1975, pursuant to an application y Hannock, Weisman, Stern & Besser, this Court ntered an order directing the trial court to roceed with hearings on the amounts of attorneys' ees and validity of liens. On May 11, 1977 this

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[2] The record is confus[illegible]. While Mary A. Connor filed a notice of appeal pro se, an earlier notice of appeal dated April 11, 1975 was filed on her behalf by Robert B. Cherry of the firm of Cherry and Petrie.

Court entered an order dismissing a number of contentions of appellants as "meritless" but reversed the Chancery Division on its denial of Mary A. Connor's request for an adjournment of proceedings to adjudicate the amount of fees and validity of liens on the basis of her illness.

In 1977 Mary A. Connor died and attorney George Warren was appointed as Administrator c.t.a. of her estate.[3] In her will, Mary A. Connor gave, devised and bequeathed as follows:

> Second: I give and bequeath any right, title and interest, including the proceeds, of the judgment in a pending lawsuit entitled Connor v. Flynn, Docket A-2853-74, in the Superior Court of New Jersey to my son, John Richard Connor, absolutely and forever.
>
> Third: All the rest, residue and remainder of my estate, real, personal and mixed, including all monies in trust fund in court in Flynn v. Connor, Docket No. C-3138-68 in the Superior Court of New Jersey, of whatsoever the same may consist and wheresoever situate of which I die seized or possessed or to which I may be entitled at the time of my decease, I give, devise and bequeath unto

---

3. Appellant's brief indicates that John R. Connor was appointed as executor of the Estate of Mary A. Connor. Although Connor raises the appointment of an administrator c.t.a. as an issue, the date of the initial appointment of an administrator c.t.a. and the proceedings are not in the record before us.

> my husband, Thomas Boyd Connor, absolutely and forever.

George Warren resigned and on December 4, 1979, Lucas E. Phillips, Jr. was appointed as substitute administrator, c.t.a. of the Estate of Mary A. Connor.

This was followed by a second appeal, the date of which is not in the record before us. On September 18, 1980 this Court summarily dismissed the appeal as follows:

> Points one and two raised by appellant have already been adjudicated below and affirmed, and therefore are barred by res judicata. Point three is based upon surmise and personal opinion, neither of which would constitute competent proof of the allegation, which, at best, is premature. Point four is frivolous. Transcripts are not "evidence" on appeal.
>
> Appeal dismissed.

The record in the appeal before us does not indicate the grounds upon which that appeal was predicated.

On August 7, 1981 (appellant refers to this order as being entered September 21, 1981) Judge Paul Thompson entered an order directing that the money on deposit with the Clerk of the

Superior Court be paid to Lucas E. Phillips, Jr., administrator c.t.a. of the Estate of Mary A. Connor. The order provided that the liens would remain valid and directed that "all interested parties submit certifications and exhibits relating to their claims against said funds" for review by the administrator. A hearing on the liens was held before Judge Thompson in December 1981. The attorneys claiming liens upon the funds deposited with the Clerk were present, as was Fred Blackwell and John Watson, Jr., attorney for the administrator c.t.a. Connor was not present at the proceedings and sent a mailgram to Judge Thompson requesting a "stay of the return date." The mailgram was not received by Judge Thompson until midway through the morning proceedings and was made a part of the record. Connor objected to "anything transpiring" but the proceedings continued.

This proceeding triggered a third appeal to this Court. Although this order is the subject of appeal by the appellants, it is not a part of the record before us and the date of the

appeal is unknown. At any rate, on May 25, 1983 this Court entered an order dismissing the appeal on the basis that it was interlocutory and brought without leave of court having been sought nor granted. We deem this interlocutory order is now moot in view of the final order entered by the Chancery Division on February 29, 1984.

The latest chapter in the tortuous history of this legal saga commenced on November 16, 1983. On that date the attorneys claiming liens upon the funds on deposit with the Clerk of the Superior Court, as well as John Watson, Jr., attorney for the present administrator c.t.a. Lucas B. Phillips, Jr., again appeared before Judge Thompson for a plenary hearing on the liens. Connor entered his appearance with the Court stating that he was executor of the Estate of Mary A. Connor to which Fred Blackwell objected. He noted that Connor was neither the executor of the estate nor a party to the proceedings.

Connor entered a number of objections. He first objected to the court's "authority to con-

duct the proceedings" because of the "court order of Stay which was entered on the record and filed October 7, 1982." Our attention has not been directed to, nor do we find any documentation in, the record before us concerning the stay referred to by Connor. The trial judge denied Connor's application, noting that, "the time for appeal has expired."

Connor then made a further objection and stated that he had another appeal pending "from the challenge to the appointment of the administrator, Lucas Phillips." He claimed that Lucas' appointment was "predicated on a fraud perpetrated in the Appellate Division." Connor contested his authority to represent the estate. Judge Thompson denied the application declaring that the matter had been adjudicated by the Appellate Division.

Connor then argued that he was entitled to have Mary A. Connor's will interpreted because it gave him sole "title" in the litigation involving the liens. He argued that he should have

the right to cross-examine the applicants for the escrowed money, a right that the court informed him he had as "a legatee." Despite being told that he could participate in the proceedings, Connor persisted in his demand that the will be interpreted. Connor then moved for a continuance which the court denied stating that it was "for the purpose of delay and harassment."

Connor then left the courtroom and the attorneys proceeded to prove their respective liens and the amounts thereof. On February 29, 1984 Judge Thompson entered an order allowing counsel fees, disbursements and accumulated interest "to be paid by the Clerk of the Superior Court from the funds on deposit with said Clerk in the Case of Flynn v. Connor, Docket No. C-3138-68 and C-2565-68, consolidated, Superior Court of New Jersey, Chancery Division, Essex County."[4]

These disbursements and interest are summarized as follows:

---

4. It appears that the prior order of August 7, 1981 directing that the funds be paid over to Lucas B. Phillips, Jr., administrator c.t.a. was never implemented.

(A) Keane, Brady & Hanlon, Esq.

Attorney's Fee, disbursements and interest from May 10, 1973.....$ 3,696.00

(B) Fred R. Blackwell, Esq.

Attorney's Fee, disbursements and interest from May 10, 1973.....$22,996.44

(C) Hannock, Weisman, Stern, Besser Berkowitz & Kinney, P.A.

Attorney's Fee and interest from October 29, 1975.....$16,211.34

(D) George Warren, Esq.

Attorney's Fee, disbursements and interest from January 9, 1980.....$ 6,094.26

(E) Belson & Carlin, Esq.

Attorney's Fee disbursements and interest from November 4, 1974.....$ 1,000.00

The court ruled that if the funds on deposit with the Clerk of the Superior Court were insufficient to pay all the fees, any balance remaining due is to be paid from the Estate of Mary A. Connor. This appeal followed.

On this fourth appeal, appellants contend that:

> Point I. The February 29, 1984 Order of Disbursement and the September 21, 1981 "Interlocutory" Order are null and void, as a matter of law, because the trial court

lacked jurisdiction to conduct probate proceedings within the jurisdictional predicate of the accounting and partition litigation entitled Connor v. Flynn and Flynn v. Connor, Docket Nos. C-2565-68/C-3138-68.

(a) The two orders herein appealed are void for lack of jurisdiction because the proper parties were not present(Factor 2), Appellant John R. Connor having a "right" to litigate the liens in Connor v. Flynn as party-plaintiff.

Point 2. Entry of the two orders appealed herein substantially violated John R. Connor's Due Process right under R. 4:34-1(b) and the Fourteenth Amendment to be substituted for Mary A. Connor in this litigation.

(a) The joinder of the Administrator, CTA, as a party-defendant in Flynn v. Connor, C-3138-68, without notice to Appellants, violates their rights under the Due Process Clause of the Fourteenth Amendment.

Point 3. The September 21, 1981 and February 29, 1984 orders are clearly erroneous because they unlawfully permit payment of attorneys' fees from a Superior Court trust fund when the fees were not incurred in the creation, preservation or protection of the fund.

Point 4. The orders of September 21, 1981 and February 29, 1984 are null and void, as a matter of law, because they have been procured through fraud.

We are satisfied that the issues of law raised by appellants are clearly without merit and we determine that an opinion would have no precedential value. R. 2:11-3(e)(1)(E). Never-

theless we will succintly dispose of these issues which basically are that (1) the trial court lacked jurisdiction to award any fees because the proceedings were probate in nature; (2) the proper parties, i.e., John R. and Thomas R. Connor, the beneficiaries, were not present during adjudication of the legal fees; (3) the substitution of Lucas E. Phillips, Jr. as administrator c.t.a. for the estate of Mary A. Connor violated John R. Connor's due process rights; (4) the court order unlawfully permitted payment of counsel fees which were not incurred in the creation, preservation or protection of the fund, and (5) the orders are void because they have been procured through fraud.

Probate proceedings are not even remotely involved in the two proceedings below. The monies on deposit with the Clerk of the Superior Court arose from the partition proceedings and the accounting proceedings from the profits and receipts of the tavern. The only relation to probate is the fact that the administrator c.t.a. is a proper party to the proceedings as a rep-

resentative of the Estate of Mary A. Connor. See Palko v. Palko, 73 N.J. 395, 398 (1977). The personal representative has the obligation of collecting the assets of the deceased, paying the claims against the estate and distributing the residue to those entitled to it. In Re Armour's Will, 33 N.J. 517, 524 (1960); In Re Bayles, 108 N.J. Super. 446, 453 (App. Div. 1970). Pursuant to N.J.S.A. 3B:10-29 "Every personal representative has a right to, and shall take possession or control of decedent's property..." An administrator and an executor each "has the same power over the title to property of the estate that an absolute owner would have, in trust however for the benefit of the creditors and others interested in the estate." N.J.S.A. 3B:10-30. The executor had the duty to defend actions brought against the estate and those brought against the decedent still pending at the time of death. 31 Am. Jr. 2d, Executors and Administrators, §180 at 102. Moreover, the next of kin of a decedent have no standing in a court of law or equity

to maintain an action for recovery of property alleged to belong to the estate of the decedent. Such actions can be brought only by the duly appointed representative of the deceased. Buchanan v. Buchanan, 75 N.J. Eq. 274,276 (E & A 1908). Lucas E. Phillips, as administrator c.t.a. of the Estate of Mary A. Connor, was the only proper party to the proceedings.

At the November 16, 1983 hearing, the parties agreed to substitute Mary Connor's estate's administrator, Lucas E. Phillips, as party defendant. This substitution of Phillips for Mary Connor as defendant was incorporated in Judge Thompson's order of February 29, 1984. However, the administrator participated in the December 1981 hearing as a de facto party and the substitution that took place in 1984 was merely a formality. The administrator's lawyer was present throughout both hearings and had the opportunity to cross-examine witnesses, object, and participate fully in the proceedings.

Connor contends that his Due Process right

under R. 4:34-1(b) and the Fourteenth Amendment, to be substituted for Mary A. Connor in this litigation, is violated apparently because he was not given notice of the joinder of the administrator c.t.a. as a party defendant. Again appellant misinterprets or distorts the purpose of the rule. The rule was formerly R.R. 4:38-1(a). In Schnitzer & Wildstein, N.J. Rule Serv., (special reprint edition 1982), A IV-1225, it is stated: "The rule [R. 4:34-1(b)] specifies the procedure for substitution of parties, consequent upon death, and abolishes former cumbersome practices. ...Any surviving party of the successors or representatives of the deceased party may take the necessary step. If the motion is made by a non-party, such as a successor or representative of the deceased party, it is served on all other parties..." (emphasis supplied).

"If the motion is made by a party to the action, service on the non-party successor or representative of the deceased party is accom-

plished in the manner provided in R.R. 4:4-4 for the service of a summons..." Ibid. (emphasis supplied).

The text then continues and states that: "Substitution is essential so that the record may reflect the real parties in interest. Notice of the substitution is required, ...to afford the personal representative a fair opportunity to appear to be heard in defense of the decedent's interest." (emphasis supplied) Id. at 1229.

The successor or personal representative upon whom the interest of the deceased in the action has devolved may seek like relief provided that the necessary qualifications and interests are demonstrated. See Bruno v. Long Branch, 35 N.J.Super. 304 (App. Div. 1955), aff'd 21 N.J. 68 (1956). Rule 25(a)(1) of the Federal Rules of Civil Procedure (FRCP), of which the New Jersey Rules of Civil Procedure are a counterpart, applies only to the substitution of legal representatives. Malonee v. Fahey, 200 F.2d 918,919 (9 Cir. 1952). Connor

was entitled to no notice under the rule.

While not a party to these proceedings, the trial judge nevertheless allowed Connor to participate in the proceedings as a beneficiary under the will. Judge Thompson told Connor "[c]ertainly, you can be heard. What is your problem?" Connor was given the opportunity to be heard; he refused it and walked out of the courtroom. He cannot be heard to complain on appeal.

The trial court had the jurisdiction to hold its plenary hearing to adjudicate the attorneys' liens, with the administrator c.t.a. acting as defendant in Mary A. Connor's stead. Proofs were submitted as to the amount and the validity of liens. Services were rendered by the respective attorneys and the funds as the result of the accounting and partition proceedings in which they represented the decedent. The attorneys had a direct interest in the funds generated by their efforts.

Affirmed.

APPENDIX "C"
(Filed: March 6, 1984)

John H. Watson, Jr.
Attorney for Lucas Phillips,
Administrator, C.T.A.
98 Prospect Street
East Orange, New Jersey 07017

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: ESSEX
COUNTY

DOCKET NO. C-2565-68
C-3138-68

ORDER
To Pay Out Funds
On Deposit

Paul B. Thompson, J.S.C.

In the Matter of:

MARY A. CONNOR, Individually and as Executrix of the Estate of Mary Ellen Flynn,
Plaintiff,
vs.
EDWARD J. FLYNN,
Defendant.

EDWARD FLYNN and BERNICE FLYNN,
Plaintiffs,
vs.
MARY A. CONNOR and THOMAS CONNOR,
Defendants.

This matter being opened to the Court on November 16, 1983, the Honorable Paul B. Thompson, presiding, by John H. Watson, Jr., Attorney for Lucas Phillips, Administrator, C.T.A., on Petitions for an order establishing Counsel Fees in this matter, and in the presence of Lucas Phillips, Administrator, C.T.A., Keane, Brady & Hanlon, Pro se, (Michael B. Holt), Fred Blackwell, Pro se, Hannoch, Weisman, Stern, Besser, Berkowitz and Kinney, Pro se, (Ira M. Levee, Esq.), and Mr. John Connor, and the Court having considered the report of the Administrator, C.T.A., dated December 21, 1981, and after conducting a plenary hearing on all of said matters, and having considered the argument of Counsel, and for good cause shown, it is on this 29th day of February, 1984,

ORDERED AS FOLLOWS:

I. Lucas Phillips, Administrator, C.T.A., is hereby named as a party defendant in substitution of deceased defendant Mary A. Connor.

II. The following Counsel Fees and Disbursements are allowed, together with accumulated

interest in the amounts set opposite the legend "Interest Reduced To" and "Accrued Interest Through November 16, 1983", and are to be paid by the Clerk of the Superior Court from the funds on deposit with the said Clerk in the Case of Flynn v. Connor, Docket Nos. C-3138-68 and C-2565-68, consolidated, Superior Court of New Jersey, Chancery Division, Essex County:

(A) Keane, Brady & Hanlon, Esq.

Attorney's Fee		$ 2,050.00
Disbursements		167.92
		2,217.92
Interest		
6% from 05/10/73-03/31/75	$ 248.76	
8% from 04/01/75-09/13/81	1,154.44	
12% from 09/14/81-11/16/83	579.62	
	1,982.22	
Interest Reduced to		1,478.08
		3,696.00

(B) Fred R. Blackwell, Esq.

Attorney's Fee		$ 12,436.50
Disbursements		183.81
Research Assistant		1,200.00
		13,820.31
Interest		
6% from 05/10/73-03/31/75	$1,568.57	
8% from 04/01/75-09/13/81	7,138.68	
12% from 09/14/81-11/16/83	3,604.76	
	12,312.01	
Interest Reduced To		9,176.13
		22,996.44

(C) Hannoch, Weisman, Stern, Besser, Berkowitz & Kinney, P.A.

Attorney's Fee		$10,641.30
Interest		
8% from 10/29/75-09/13/81	$5,002.87	
12% from 09/14/81-11/16/83	2,777.81	
	7,780.68	
Interest Reduced To		5,570.04
		16,211.34

(D) George Warren, Esq.

Attorney's Fee		4,250.00
Disbursements		115.00
		4,365.00
Interest		
8% from 01/19/80-09/13/81	$ 576.90	
12% from 09/14/81-11/16/83	1,152.36	
Accrued Interest Through November 16, 1983		1,729.26
		6,094.26

(E) Belson and Carlin

Attorney's Fee		875.00
Disbursements		12.20
		887.20
Interest		
6% from 11/04/74-03/31/75	$ 21.58	
8% from 04/01/75-09/13/81	453.13	
12% from 09/14/81-11/16/83	231.60	
	706.31	
Interest Reduced To		112.80
		1,000.00

III. Interest on the said Counsel Fees and Disbursements shall continue to accrue at the

applicable statutory rate from November 17, 1983 until the date on which said Fees and Disbursements are paid in accord with this Order.

IV. The said Clerk of the Superior Court shall pay the sum of $5,500 to Lucas Phillips, C.T.A. for his services in this matter as Administrator and for the services in this matter of his Attorney, John H. Watson, Jr., Esq.

V. If said funds on deposit with the Clerk of the Superior Court are insufficient to pay all of the aforecited Counsel Fees and Disbursements, and interest thereon, any part of said Fees and Disbursements, and interest thereon, remaining unpaid after exhaustion of said funds shall be paid by the Estate of Mary A. Connor.

VI. If any monies remain in such fund on deposit with the Clerk of the Superior Court after payment of the aforecited Counsel Fees and Disbursements, and interest thereon, said monies shall be paid to the Administrator, C.T.A.

of the Estate of Mary A. Connor.

/s/Paul B. Thompson
Paul B. Thompson, J.S.C.

Dated:

APPENDIX "D"
(Filed: January 15, 1986)

SUPREME COURT OF NEW JERSEY
M-420 SEPTEMBER TERM 1985

24,381

IN THE MATTER OF MARY A. CONNOR, etc.,
Plaintiff,

vs.

EDWARD J. FLYNN,
Defendant.

EDWARD FLYNN, et al,
Plaintiffs,

vs.

MARY CONNOR, et al,
Defendants.

(John R. Conner - Movant)

O R D E R

This matter having been duly presented to the Court, it is ORDERED that the motion for reconsideration of A-109 is denied.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 13th day of January, 1986.

/s/ Stephen W. Townsend
CLERK OF THE SUPREME COURT

APPENDIX "E"
(Filed: July 11, 1985)

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3187-83T3
MOTION NO. M-4488-84
BEFORE PART B

JUDGES: KING
DEIGHAN

MARY A. CONNOR, Individually and
as Executrix of the Estate of
Mary Ellen Flynn
VS.
EDWARD J. FLYNN
EDWARD FLYNN and BERNICE FLYNN

VS.

MARY CONNOR and THOMAS CONNOR

MOVING PAPERS FILED June 14, 1985
ANSWERING PAPERS FILED
DATE SUBMITTED TO COURT July 3, 1985
DATE ARGUED
DATE DECIDED July 11, 1985

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS HEREBY ORDERED AS FOLLOWS:

PETITION FOR REHEARING AND
RECALL OF JUDGMENT. DENIED.

SUPPLEMENTAL:

FOR THE COURT:

/s/ Michael Patrick King
MICHAEL PATRICK KING, P.J.A.D.

WITNESS, THE HONORABLE MICHAEL PATRICK KING, PRESIDING JUDGE OF PART B, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, THIS 11th DAY OF July, 1985.

/s/ Elizabeth McLaughlin
CLERK OF THE APPELLATE DIVISION

APPENDIX "F"

(Filed: May 11, 1977)

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A 898-75

MARY A. CONNOR, Individually and as Executrix of the Estate of Mary Ellen Flynn,

Plaintiff-Appellant,

v.

EDWARD J. FLYNN,

Defendant.

Argued February 23, 1977; Decided May 11, 1977

Before Judges Lora, Crane and Michels.

On appeal from Superior Court, Chancery Division, Essex County.

Mr. John Connor argued the cause on behalf of appellant Mary A. Connor, pro se.

Mr. Fred Blackwell, respondent, appeared pro s

Mr. Albert Besser argued the cause on behalf of respondent Messrs. Hannoch, Weisman, Stern & Besser, pro se.

Messrs. Milton, Keane & Brady, respondent pro se filed a statement in lieu of brief.

PER CURIAM

Plaintiff appeals from an order of the Chan-

ery Division dated October 28, 1975, fixing the amount of attorneys' liens and directing the clerk of the court to pay to the attorneys the amounts so fixed out of funds held by the clerk. Plaintiff contends that the court did not have jurisdiction over the subject matter of the attorney's fee applications, that there was a conspiracy between counsel and the court to defraud her and that the court erred in relieving Mr. Cherry, her latest attorney. We find all of the above contentions to be without merit. This court directed the Chancery Division to hear the applications for counsel fees. The record is devoid of any evidence of conspiracy. The matter of Mr. Cherry's representation is not properly before us on this appeal.

Plaintiff's remaining contention requires more extensive discussion. She contends that she was incapacitated on October 20, 1975, the date of the hearing, and that the action of the court in conducting the hearing in plaintiff's absence after refusing her request for an adjournment

was "an extreme abuse of the trial court's powers and demonstrates bias and prejudice on the part of the Court against Appellant Mary A. Connor in favor of the attorneys."

A reading of the record reveals that plaintiff commenced an action in chancery seeking an accounting of the conduct of a tavern business and partition of the business. Plaintiff was represented by a series of lawyers whose services were unsatisfactory to her and each of whom was discharged by her in turn. Plaintiff has represented herself on this appeal with the assistance of her son John Connor who is not an attorney. No objection has been made to his assisting his mother.

The attorney's lien claims were heard by the court below on October 20, 1975. Two previous hearing dates had been postponed because of reports to the court that Mrs. Connor was incapacitated by an automobile accident which occurred in June 1975.

Four days before the hearing on this matter,

the court clerk telephoned Mrs. Connor's home to advise her that the matter was scheduled for 9 a.m. on October 20. He testified that he was treated rudely by someone who hung up the phone. As a result, the court found that there was a "conscious deliberate plan on the part of the Connors to obstruct these proceedings, to delay them, and to obtain advantages which people are ordinarily not entitled to when they are engaged in litigation."

We can well understand the reaction of the trial judge after his repeated attempts to bring about a final resolution of the litigation before him. Nevertheless, we have concluded after a careful review of the record, that the court below erred in denying plaintiff's request for a further adjournment.

Plaintiff was entitled to a plenary hearing on the matter of counsel fees. H. & H. Ranch Homes, Inc. v. Smith, 54 N.J. Super. 347 (App. Div. 1959). She was entitled to appear and be heard with regard to the fair value of attor-

neys' services. Tuessel v. Cadillac Bar Corp., 63 N.J. Super. 430 (App. Div. 1960), certif. den. 34 N.J. 65 (1961).

Prior to the October 20, 1975 hearing, the court had before it a handwritten request from Mrs. Connor in which she asserted her inability to attend and requested a postponement. Attached to the letter was a certificate dated September 5, 1975 from Dr. R. C. Dangelmajer, an orthopedic surgeon practicing in Summit, New Jersey, containing the following statement:

> Mrs. Mary Connor is still under my care for a very severe trimalleolar fracture dislocation of her right ankle. She is now in a short leg cast, but continues on very limited activity with only slight weight bearing allowed. She is still considerably incapacitated and will remain so for at least the next two months.

The court was certainly familiar with the contents of the certificate since it had been presented once before in connection with an earlier request for an adjournment. By its terms it projected the period of disability at two

months which would have extended into November 1975. The court also had before it a certificate of Dr. Kopel Burk, of Millburn, New Jersey, a physician specializing in internal medicine, dated October 17, 1975, stating that Mrs. Connor could not be in court because of gastroenteritis.

The question of whether or not a request for an adjournment should be granted rests in the sound discretion of the trial judge with a view to the manifest rights of the parties and the prevention of injustice. In re Koretzky, 8 N.J. 506, 535 (1951). In the instant case there was nothing before the court to indicate that Mrs. Connor was malingering or that the statements of her treating physicians were not accurate. If the court had serious doubt of the accuracy of the reports of plaintiff's physicians, it could have, as an exercise of its inherent power, appointed its own expert to examine and report to aid it in ascertaining the extent of plaintiff's disability. Polulich v. J.G. Schmidt Tool Die & Stamping Co., 46 N.J. Super. 135

(App. Div. 1957). We are persuaded that to have denied plaintiff's request for an adjournment of the hearing under the circumstances here presented was a mistaken exercise of discretion which deprived plaintiff of her day in court. See Allegro v. Afton Village Corp., 9 N.J. 156, 161 (1952); Burke v. Scott, 410 S.W.2d 826 (Civ. App. Tex. 1967); Gallavan v. Hoffner, 154 Colo. 353, 390 P. 2d 817 (Colo. 1964); Bairas v. Johnson, 13 Utah 2d 269, 373 P. 2d 375 (Utah 1962); Andersen v. Chapman, 356 P. 2d 1072 (Okla. 1960); Thanos v. Mitchell, 152 A. 2d 833 (Ct. App. Md. 1959).

The judgment is reversed. The cause is remanded to the Chancery Division for a plenary hearing consistent with the views expressed in this opinion. Jurisdiction is not retained.

APPENDIX "G"

(Filed: September 21, 1981)

OWENS, BANKS & WILLIAMS
1180 Raymond Boulevard
Suite 2440
Newark, New Jersey 07102
(201) 623-4468

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: ESSEX COUNTY

DOCKET NO. C-3138-68
C-2565-68

EDWARD FLYNN and BERNICE FLYNN,

Plaintiffs,

-vs-

MARY A CONNOR and THOMAS CONNOR,

Defendants.

ORDER

This matter being opened to the Court, on June 19, 1981, by the Administrator, CTA of the Estate of Mary A. Connor (John H. Watson, Esq. appearing on behalf of the Administrator, CTA) and in the presence of Hannoch, Weisman, Stern and Besser P.A. (Irwin P. Burzynski, Esq.

appearing) and Fred Blackwell, Esq. and the Court having read the Certifications submitted and considered the agruments (sic)of counsel and for good cause shown.

IT IS ON this 7th day of August, 1981, ORDERED that the funds on deposit with the Clerk of the Superior Court with accumulated interest, recovered by Mary A. Connor in the case of Edward Flynn and Bernice Flynn vs. Mary A. Connor and Thomas Connor, Docket No. C-3138-68 consolidated with C-2565-68, Superior Court of New Jersey, Chancery Division, Essex County, be paid to the Lucas E. Phillips, Jr., Esq., Administrator, CTA.

IT IS FURTHER ORDERED that any and all liens shall remain valid and subsisting, however, all interested parties shall submit certifications and exhibits relating to their claims against said funds, for the review of the Administrator, CTA.

IT IS FURTHER ORDERED that after such review, the Administrator, CTA, will bring an

application before the Court, for an Order establishing the amount of such claims and authorizing the pay-out of same.

/s/ Paul B. Thompson
Paul B. Thompson, J.S.C.

Dated:

APPENDIX "H"

CERTIFICATION

I, Lucas E. Phillips, Jr., do hereby certify:

1. There is $35,546.00 recovered by Mary A. Connor in the case of Edward Flynn and Bernice V. Flynn, vs. Mary A. Connor and Thomas Connor, Docket No. C-3138-68, consolidated with C-2565-68, Superior Court of New Jersey, Chancery Division, Essex County, presently on deposit with the Clerk of the Superior Court with accumulated interest.

2. By judgment of the Superior Court of New Jersey, dated December 3, 1979, I was appointed Administrator, C.T.A. of the Estate of Mary A. Connor, deceased, late of Essex County.

3. As Administrator, C.T.A., I wish to collect said funds on deposit with the Clerk of the Superior Court in order to satisfy the obligations of the Estate of Mary A. Connor.

4. In particular, it is my intention to pay the following debts immediately upon the

release of said funds:

(A) Hannoch, Weisman, Stern, Besser, Berkowitz & Kinney, P. A.
744 Broad Street
Newark, New Jersey 07102

In the Matter of the Estate of Mary A. Connor, Docket No. P-392-77

Attorneys Fee	3,000.00	
Disbursements	385.10	
SUBTOTAL		$3,385.10

Flynn v. Connor
Docket No. C-3138-68 and C-2565-68

Attorneys Fees	$11,955.15	
Disbursements	176.54	
Subtotal	$12,131.69	
Paid on Account	1,490.39	
SUBTOTAL		$ 10,641.30
TOTAL		$ 14,026.40

(B) George Warren, Esq.
Post Office Box 645
Princeton, NJ 08540

In the Matter of the Estate of Mary A. Connor, Docket No. P-392-77

Attorneys Fee	$ 4,250.00	
Corpus Fee	2,413.50	
Disbursements	115.00	
TOTAL:		6,778.50

(C) Milton, Keane & Brady, Esqs.
40 Journal Square
Jersey City, New Jersey 07306

Flynn v. Connor
Docket No. C-3138-68 and C-2565-68

Attorneys Fees	$ 2,050.00	
Disbursements	167.92	
TOTAL:		2,217.92

(D) Fred P. Blackwell, Esq.
19129 Roman Way
Gaithersburg, Maryland
20760

Flynn v. Connor
Docket No. C-3138-68 and C-2565-68

Attorneys Fees	$12,437.50	
Disbursements	183.81	
Research Assistant	1,200.00	
TOTAL:		13,821.31

(E) Belson & Carlin
12 Ridge Street
Basking Ridge, N.J.

Flynn v. Connor
Docket No. C-3138-68 and C-2565-68

Attorneys Fees Pursuant to Judgement November 26, 1974	875.00	
Cost of Suit	12.20	
TOTAL		891.20

Grand Total 37,690.33

(5) All parties have requested the payment of interest on the debts satisfied from the above mentioned fund. I have made no determination regarding the payment of interest for any party.

I certify that the foregoing statements made by me are true. I am aware that if any of the above statements made by me are false, I am subject to punishment.

/s/Lucas E. Phillips, Jr.
LUCAS E. PHILLIPS, JR.

Dated: December 21, 1981

APPENDIX "I"

OWENS, BANKS & WILLIAMS
[Letterhead]

January 7, 1982

Honorable Paul B. Thompson
New Courts Building
Newark, New Jersey 07102

Re: Flynn v. Connor
C-3138-68
C-2565-68

Dear Judge Thompson:

I am enclosing an original and three copies of an Order in the above entitled matter, which was heard by your Honor on December 22, 1981.

I am sending a copy of this letter along with a copy of the proposed form of Order to all persons involved. If there is no objection to this Order within five days hereof, and this Order meets with Your Honor's approval, I would appreciate it if you would sign, and return the additional copy in the stamped, self-addressed envelope.

Respectfully yours,

OWENS, BANKS & WILLIAMS

/s/ John H. Watson, Jr.
By: John H. Watson, Jr.

JHW:dm

cc: All Counsel
John R. Connor, certified & regular
Thomas B. Connor, Sr., certified & regular

APPENDIX "J"

OWENS, BANKS & WILLIAMS
1180 Raymond Boulevard
Suite 2440
Newark, New Jersey 07102

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: ESSEX COUNTY

EDWARD FLYNN and BERNICE FLYNN,

Plaintiffs,

-vs-

MARY A CONNOR and THOMAS CONNOR,

Defendants.

DOCKET NO. C-3138-68
C-2565-68

ORDER

This matter being opened to the Honorable Paul B. Thompson, on December 22, 1981, by the Attorneys for the Administrator, C.T.A. of the Estate of Mary A. Connor, Owens, Banks and Williams, (John H. Watson, Jr., appearing), and in the presence of Hannoch, Weisman, Stern, Besser, Berkowitz and Kinney, Fred Blackwell, Milton, Keane and Brady, and Belsen and Carlin for an order establishing Counsel fee in this matter, and the Court having read and consider-

ed the report of the Administrator, C.T.A. and considered the argument of Counsel and for good cause shown;

It is on this _____day of January, 1982, ordered that the following Counsel Fees and Disbursements shall be allowed:

(A) Hannoch, Weisman, Stern, Besser, Berkowitz & Kinney, P.A.

In the Matter of the Estate of Mary A. Connor and Flynn V. Connor

Attorney's Fee	$ 3,000.00
Disbursements	385.10
SUBTOTAL	$ 3,385.10
Interest 8% from 2/09/80-09/13/81 12% from 09/14/81-12/22/81	$ 542.73
	$ 3,927.83
Attorney's Fee (Lien)	$10,641.30
Interest 8% from 10/29/75-11/13/81 12% from 11/13/81-12/22/81	$ 5,346.89
	$15,988.19

(B) George Warren, Esq.

Attorney's Fee	$ 4,250.00
Corpus Fee	2,413.50
Disbursements	115.00
	$ 6,778.50

(C) Milton, Keane and Brady, Esq.

Attorney's Fee	$ 2,050.00
Disbursements	167.92
Interest	
6% 05/10/73-03/31/75	
8% 05/01/75-09/13/81	
12% 09/14/81-12/22/81	$ 1,470.35
	$ 3,688.27

(D) Fred P. Blackwell, Esq.

Attorney's Fee	$12,436.50
Disbursements	183.81
Research Assistant	1,200.00
Interest	
6% from 05/10/73-04/01/75	
8% from 04/01/75-09/14/81	
12% from 09/14/81-12/21/81	$ 9,152.45
	$22,972.76

(E) Belson and Carlin

Attorney's Fee	$ 875.00
Disbursements	12.20
Interest	
6% from 11/04/74-03/31/75	
8% from 04/01/81-09/13/81	
12% from 09/04/81-12/22/81	$ 508.59
	$ 1,395.79

It is further ordered that all parties who object to the above are hereby directed to file their objection within _____days from the date of this order.

[unsigned]
Paul B. Thompson, JSC

APPENDIX "K"

MILTON, KEANE & BRADY
[Letterhead]

December 29, 1981

John H. Watson, Jr., Esq.
Owens, Bank and Williams
1180 Raymond Boulevard
Newark, New Jersey 07102

Re: In the Matter of the Estate of
Mary A. Connor, Deceased -and-
Flynn v. Connor

Dear Mr. Watson:

Pursuant to Judge Thompson's ruling on December 22, 1981, we hereby submit our calculations of the principal and interest due to Milton, Keane & Brady in the above action. We are in accord with the principal figure of $2,217.92 that is due and owing to us, as indicated in Lucas Phillip's certification of December 21, 1981, as corrected on the record.

Interest on this principal amount began to run on May 10, 1973, at 6%. The interest ratio pursuant to N.J. Court Rules changed to 8% on April 1, 1975 and again was increased to 12% on September 14, 1981.

For the 6% period the interest on the principal figure of $2,217.92 is $.3646 per diem. There are 691 days (1 year 325 days) from May 10, 1973 to March 31, 1975. 691 x $.3646 = $251.94 which is the interest due and owing.

For the 8% period the interest is $.4861 per diem. There are 2358 days(6 years and 167 days) from April 1, 1975 to September 13, 1981. 2358 x .4861 = $1,146.22.

For the 12% period the interest is $.7292 per diem. There are 99 days from September 14, 1981 to December 22, 1981. 99 x $.7292 = $72.19.

The total amount due as of December 22, 1981 is $3,688.27($2,217.92 + $251.94 + $1,146.22 + $72.19 = $3,688.27). Please note that interest will run at .12% or $.7297 per diem from December 22, 1981 until we receive the monies owed to Milton, Keane & Brady.

We maintain that Fred Blackwell and Milton, Keane & Brady created this fund deposited in Court. The law firm of Hannoch, Weisman, Stern, Besser, Berkowitz and Kinney, the law firm of

Belson and Carlen, and George Warren did not have a lien until well after our liens attached. Therefore, if there is insufficient funds in Court to cover all claims, we must be given priority in any disbursement.

If you have any questions concerning the interest computation, please feel free to call either me or Michael B. Holt.

Very truly yours,

/s/ Kevin Hanly
KEVIN HANLY

KH/lmg

cc: Hon. Paul B. Thompson
Fred Blackwell, Esq.
Irwin P. Burzynski, Esq.
George Warren, Esq.
Arthur N. Furhman
Mr. John Connor

APPENDIX "L"

FRED BLACKWELL
Attorney At Law

19129 Roman Way
Gaithersburg, Md.
20879

CERTIFIED MAIL #P29 6245818

May 18, 1983

Honorable Paul B. Thompson
Superior Court of New Jersey
Essex County Court House
Newark, New Jersey 07102

Re: Connor v. Flynn
Docket Nos. C-3138-68 and C-2565-68

Judge Thompson:

I am writing to request that a hearing be held on the claims for counsel fees in the above matter. I believe that such a hearing is necessary in order to comply with the requirement of the May 11, 1977 decision of the Appellate Division "for a plenary hearing consistent with the views expressed in this opinion."

The background and basis of this request is that the claims of the undersigned and other attorneys for counsel fees in this matter were determined to be valid by the December 21, 1981

report thereon by the Administrator C.T.A., of the Estate of Mary A. Connor. In considering that report in open Court on December 22, 1981, this Court approved said claims for counsel fees, plus interest.

However, because of an appeal by Mr. John Connor of this Court's order dated September 21, 1981, there have been no further proceedings on this Court's rulings of December 22, 1981. Said appeal has now been dismissed and this Court is thus empowered to take such further proceedings as it deems appropriate in regard to the counsel fees.

I am aware that the status of the fee claims as of December 22, 1981, is such that the Court might contemplate the issuance of an order incorporating the rulings of December 22, with any individual claiming aggrievement to have a right to object by a date certain. I submit, however, that the scheduling of a hearing is the preferred procedure since this would negate argument by an individual that the Chancery Division failed to comply with the Appellate Division's

decision of May 1977.

Respectfully,

/s/ Fred Blackwell
Fred Blackwell
Pro se

FB:ak

cc: Thomas Connor
John Watson, Jr., Esq.
Arthur Furhman, Esq.
Lucas Phillips, Esq.
George Warren, Esq.
Ira Levee, Esq.
Michael Holt, Esq.

APPENDIX "M"

HANNOCH, WEISMAN, STERN, BESSER,
BERKOWITZ & KINNEY
[Letterhead]

October 13, 1983

John H. Watson, Jr., Esq.
98 Prospect Street
East Orange, New Jersey

George Warren, Esq.
112 Nassau Street
Princeton, NJ 08540

Arthur N. Furhman, Esq.
Belson and Carlin
12 Ridge Street
Basking Ridge, NJ 07920

Fred P. Blackwell, Esq.
19129 Roman Way
Gaithersburg, MD 20760

Michael Holt, Esq.
Milton, Keane and Brady
40 Journal Square
Fidelity Union Bank, NA
State Building
Jersey City, NJ 07306

Re: Connor v. Flynn
Docket Nos. C-3138-68
C-2565-68

Gentlemen:

Please be advised that Judge Thompson has set the above matter down for a hearing on November 16, 1983 at 9:00 a.m.

The hearing will enable the Court to review the certification, dated December 21, 1981, submitted by Lucas Phillips, Esq., Administrator, C.T.A., (a copy of which is attached hereto),

establishing the amount of claims against the subject fund, and thereafter authorize payment of same. The Court has already determined the amount of each claim at a hearing on December 22 1981, therefore, unless otherwise directed by the Court, no further submissions are required. It should be noted, however, that the administrator's certification does not include interest. Each party should be prepared to calculate the accumulated interest on his claim.

Should you have any questions at all, please feel free to contact me.

Very truly yours,

HANNOCH, WEISMAN, STERN, BESSER,
BERKOWITZ & KINNEY, P.A.

By /s/Ira M. Levee
Ira M. Levee

IML:dlb
cc: Honorable Paul B. Thompson
John R. Connor, Pro Se
Thomas Connor

APPENDIX "N"

HANNOCH, WEISMAN, STERN & BESSER
Counsellors At Law
[Letterhead]

September 23, 1970

Mrs. Mary Connor
380 Wyoming Avenue
Millburn, New Jersey

Re: Connor vs. Flynn

Dear Mrs. Connor:

I set forth in this letter the new terms and conditions pursuant to which we shall continue to represent you individually and as executrix of the Estate of Mary Ellen Flynn, in connection with your interest as a one-third partner of Flynn's Tavern in Millburn, now being operated by your brother, Edward.

This letter specifically supersedes our agreement of September 25, 1968 and all discussions since that date.

1. You shall continue to pay all out-of-pocket disbursements in connection with the handling of your case, as incurred. The major disbursement in this regard will be the cost

of deposition transcripts which average between $250 and $300 for each day's transcript, and any expert witnesses whom we will have to engage in connection with the trial. Such experts, of course, will be hired only with your express approval;

2. You will pay us no more fees except a contingent fee, as follows:

(a) We shall receive a fee of 10% of any recovery by way of final judgment or settlement with respect to your interest in the land, building and liquor license; if the matter proceeds to actual judgment, this award undoubtedly will be specifically calculated by the court;

(b) We will receive a fee of 10% of all monies collected from the defendant, admittedly due from the latter to you by reason of his own accountings and income tax returns;

(c) We shall receive a fee of 26% of any sums recovered by way of final judgment or settlement in connection with your claims for an accounting;

(d) In the event of one or more appeals by either party from the trial court's judgment, our contingent fee as hereinabove set forth shall be increased by 5%;

(e) In the event of a settlement as distinguished from a court judgment, the first $25,000 of such settlement shall be allocated to your interest in the land, building and liquor license for purposes of computing our contingency fee as hereinabove set forth; to the extent of the monies due you by reason of the defendant's own accountings and income tax returns from 1965 to date (which monies he has not paid to you), the next monies from any such settlement shall be so allocated, with respect to which our fee shall be as in (b); and the balance of any monies received by way of such settlement shall be allocated to your claims for an accounting.

You shall receive as a credit against our contingency fees, as hereinabove set forth, the sum of $955 paid to us in fees to this date.

Please indicate your agreement as hereinabove set forth by signing the attached copy of this letter.

Sincerely yours,

/s/ Albert G. Besser
ALBERT G. BESSER

AGB'lm
ACCEPTED AND AGREED:

/s/ Mary Connor
Mrs. Mary Connor

APPENDIX "O"
(Filed: August 5, 1985)

Fred Blackwell, Pro se
19129 Roman Way
Gaithersburg, Maryland 20879
(301) 977-5000

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION:
ESSEX COUNTY

In the matter of:

MARY A. CONNOR, Individually and As Executrix of the Estate of Mary Ellen Flynn, Plaintiff, vs. EDWARD J. FLYNN, Defendant.	DOCKET NO. C-3138-68 C-2565-68 ORDER
EDWARD FLYNN and BERNICE FLYNN, Plaintiffs, vs. MARY A. CONNOR and THOMAS CONNOR, Defendants.	Paul B. Thompson, J.S.C.

This matter being opened to the Court on August 2, 1985, the Honorable Paul B. Thompson, presiding, by Fred Blackwell, Pro se, the Movant on a Motion for an order requiring the sum of

$1,016.96 of accrued interest under this Court's prior Order of February 29, 1984, to be paid to the Movant from the balance of the monies from the funds previously on deposit with the Clerk of the Superior Court in the Case of Flynn v. Connor, Docket Nos. C-3138-68 and C-2565-68, consolidated, Superior Court of New Jersey, Chancery Division, Essex County, which balance in the sum of approximately $8,500.00 is now held in a trust account by John H. Watson, Jr., Attorney for Lucas Phillips, Administrator, c.t.a. of the Estate of Mary A. Connor,

and having considered the Movant's affidavit in support of his motion, which reflects that Paragraph III of this Court's Order of February 29, 1984, provided that interest on the Counsel Fees and Disbursements awarded in such Order would continue to accrue from November 17, 1983, until the date of payment of such award, and which further reflects that this Court's said Order has been affirmed by the Appellate Division's Opinion and Order of May 30, 1985,

and having considered the argument of

Movant, and for good cause shown, it is on this 5th day of August, 1985,

ORDERED AS FOLLOWS:

The Movant shall be paid from the funds held in the aforecited trust account by John H. Watson, Jr., the sum of $1,016.96 which represents interest which continued to accrue under Paragraph III of this Court's Order of February 29, 1984, on the sum awarded the Movant for an attorney's fee and expenses from November 17, 1983 to the date of payment of said award on June 28, 1984.

/s/ Paul B. Thompson
Paul B. Thompson, J.S.C.

Dated: